

CAROL KILLIAN,

Plaintiff,

vs.

GEORGE EVAN “SONNY” PERDUE,
Secretary, United States Department
of Agriculture,

Defendant.

THIS MATTER is before the Court on the Defendant's Motion to Dismiss [Doc. 5]; the Magistrate Judge's Memorandum and Recommendation [Doc. 9] regarding the disposition of that motion; and the Plaintiff's Objection thereto [Doc. 11].

Pursuant to 28 U.S.C. § 636(b) and the standing Orders of Designation of this Court, the Honorable Dennis L. Howell, United States Magistrate Judge, was designated to consider the Defendant's motion and to submit a recommendation for its disposition.

On August 9, 2018, the Magistrate Judge filed a Memorandum and Recommendation in this case containing conclusions of law in support of a

recommendation regarding the motion to dismiss. [Doc. 9]. The parties were advised that any objections to the Magistrate Judge's Memorandum and Recommendation were to be filed in writing within fourteen (14) days of service, i.e., August 23, 2018. The Plaintiff filed her Objection on August 27, 2018. [Doc. 11].

The Plaintiff's Objection to the Memorandum and Recommendation is untimely, and she has failed to show any excusable neglect for her untimeliness. "[I]n the absence of a timely filed objection, a district court need not conduct de novo review, but instead must only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation." Diamond v. Colonial Life & Acc. Ins. Co., 416 F.3d 310, 315 (4th Cir. 2005) (internal quotation and citation omitted). Having carefully reviewed the Memorandum and Recommendation, the Court is satisfied that there is no clear error on the face of the record.

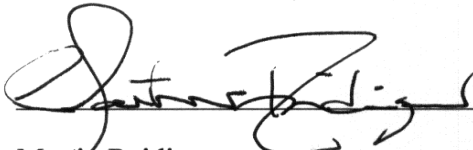
Even considering the Plaintiff's untimely objections, however, the Court concludes that the Memorandum and Recommendation should be accepted. The Plaintiff argues that the Magistrate Judge's Recommendation "relies exclusively on (1) an argument improperly raised by Defendant [in his reply brief], and (2) an unsupported misapprehension of what actions by Defendant rise to the level of an adverse employment action." [Doc. 11 at

6]. The Plaintiff misses the mark on both counts. The Defendant first raised the issue of supervisory liability in his memorandum in support of the motion to dismiss, not in his reply brief as suggested by the Plaintiff. Second, the Magistrate Judge correctly applied current Fourth Circuit case law in concluding that the Plaintiff's allegations fail to describe an adverse employment action sufficient to state a claim. Thus, even if the Court were to accept the Plaintiff's untimely filing, the Court would overrule the Plaintiff's Objection and accept the Magistrate Judge's recommendation that the motions to dismiss should be granted.

IT IS, THEREFORE, ORDERED that the Plaintiff's Objection to the Memorandum and Recommendation [Doc. 11] is **OVERRULED**; the Memorandum and Recommendation [Doc. 9] is **ACCEPTED**; the Defendant's Motion to Dismiss [Doc. 5] is **GRANTED**; and this action is hereby **DISMISSED**.

IT IS SO ORDERED.

Signed: November 20, 2018


Martin Reidinger
United States District Judge

